HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

Writ Petition No. 1001 (MS) of 2003

Chandra Prakash & others vs. Civil Judge, Dehradun & anoter

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 1.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1001 (MS) of 2003

1. Chandra Prakash s/o Sri Tilla Ram
2. Yogesh Kumar s/o Sri Tilla Ram
3. Ajay Kumar s/o Sri Tilla Ram
4. Praveen Kumar s/o Sri Tilla Ram
   All residents of 16 Park Road, Dehradun
5. Smt. Sushila Rani w/o Anand Prakash
   R/o Ramnagar, Roorkee, Haridwar
6. Smt. Kanti Rania @ Smt. Kanta Rani
   W/o Sri Narendra Kumar
   R/o Ram Nagar, Roorkee, Hardwar
7. Smt. Uma Rani w/o Sri Ashwani Kumar
   R/o Gur Mandi, Delhi
8. Smt. Sunita Ahuja w/o Sri Vinay Ahuja
   R/o 40A, Haridwar Road, Dehradun

…….. Petitioners

Versus

1. Civil Judge (Sr. Division) Dehradun
2. Nagar Nigam, Dehradun through its Administrator ……. Respondents

Sri Ram Ji Srivastava, Advocate for the petitioners
Standing Counsel for the Respondents.

Dated: 1st October 2003

Hon'ble Rajesh Tandon J:

By the present writ petition the petitioner has challenged the order dated 31.7.2003 passed by the Civil Judge (Senior Division), Dehradun.

The brief facts giving rise to the present writ petition are that the petitioners claim themselves to be the owners in possession of agricultural land measuring about 2 acres abutting Sharanpur road and G.M.S. Road surrounded by pukka boundary walls having entry gates along the road, in village Niranjanpur, Pargana Central Doon, District Dehradun. The entire property in dispute was given to the petitioners in a family arrangement entered among the members of family of petitioners on 17.4.1984. The said family arrangement was confirmed in Civil Suit No. 171 of 1989 Chandra Prakash vs. Smt. Narain Devi, decided on 14.8. 1991 by the 2nd Additional Civil Judge, Dehradun.

The petitioners have filed suit being Suit No. 347 of 2003, Chandra Prakash vs. Nagar Nigam claiming permanent injunction in the property in dispute. Application for interim injunction was also filed. The learned Civil Judge, Dehradun has granted interim injunction on 25.6.2003. The injunction granted by the Civil Judge was to the following effect:

7x@2 ikFkuk i= e; 'kiFk i= 8x okn }kjk okLr vLFkkbZ fu"k|kKk gr ikFkuk i= 7x o lyXu 'kiFk i= 8x vkj lph 9x l nkf[ky jLrkotk dk voykdu fd;k x;k A okndx.k i'uxr lEifRr e nt [kkrnkj gS vkj ftl d lEcU/k e okndx.k }kjk lph 9x l fofHkUu br[okgh [krkuh dh ifrfyfi nkf[ky dh x;h gSA ,sh ifjfLFkfr e ifrokn fdl h vUrfje fu"k|kKk d vHkko e okndx.k dk ;fn i'uxr lEifRr l cn[ky dju e lQy gk tkrk g rk okn d okn dk mnn'; foQy dh lEHkkouk gSA

The aforesaid injunction order was not challenged by the defendants and the same is still in force.

The grievance of the petitioner is that on 7.7.2003 officers of the Nagar Nigam have demolished 5 culverts abutting Saharanpur Road and G.M. causing hindrance in the possession

of the petitioners over the property and as such the petitioners are not in a position to enter into the property in dispute.

In order to bring on record the high handedness of the respondents an application paper no. 49-C was moved for restoring status quo on 11.7.2003. Apart from the aforesaid application petitioner have also filed application for inspection of the spot.

As will appear from paragraph 25 of the writ petition that Nagar Nigam has also moved an application for spot inspection on 31.7.2003. Both the applications were rejected on 31.7.2003. The grievance of the petitioners is that while rejecting the application the learned Civil Judge should not have given findings on the merits of the controversy. The learned Civil Judge has observed as follows:

oknh }kjk iLrqr okn i= dh vUr esa lph esa of.kr lEiFr esa fu"k|kKk gSrq ;kfpr fd;k x;k gS fd ifroknh i'uxr lEifRr esa oknh dh v/;klu esa gLr{ki mRriUu u djs vkj mDr okn i= esa i'uxr lEeifRr esa viu tku dk ,dek= jkLrk ifyl;k n'kkZ;h ugh x;h gS vkj ugh ml lUnHkZ esa okn esa dkbZ vuqrk"k ekxk x;k gS vU;Fkk ,slk ;fn oknh us dkbZ fuek.k ifroknh ls ckfNr vuKk yxdj fd;k Fkk rks og bl lUnHkZ esa rF; viu okn i= esa vfHkdfFkr dj ldrk Fkk tcfd ,slk okn i= dh vfHkopuk esa dqN Hkh ugh gS i'uxr Lyksa dk rkMk tkus dh ckr foi{kh us viuh vkifRr;ksa esa gh Lohdkj dh gSA ,slh ifjfLFkfr;ksa esa vc ekSds ij vehu dks Hkstdj vk[;k ekxus ls dkbZ mnns'; iwjk gksuk lEHko ugh gS D;kfd ifroknh fof'k"V #I ls ;g dgdj vk;k gS fd oknh us ftl ifyl;k dk fuek.k fd;k Fkk og fof/k fo#/k FkkA ,slh ifjfLFkfr;ksa esa mDr fuek.k fof/k leer Fkk rks bl lUnHkZ esa oknh viu vfHkopuksa esa ;g rF; yus ds fy, LorU= Fkk ;k vU;Fkk bldh fy, iFkd ls Hkh ml fof/kd mipkj miyC/k gS ,oa D;k mDr ifyl;k dks /oLr djus ls fu"k|kKk dk mYy/ku gksrk gS bl ij fopkj ikFkuk i= 49 x dh fuLrkj.k dh le; djk tk ldrk gSA i'uxr

ify;k okn dk fo"k; oLrq Hkh ugh gSA ,slh ifjfLFkfr;k esa mDr lEcU/k esa vk[;k ekxuk vif{kr Hkh ugh gS vr% ikFkuk i= 53 lh fujLkkj o fujLr gksus ;ksX; gSA

The application for ante status quo is still pending and has not been disposed of. The observation, therefore, held by the learned Civil Judge with regard to the merits of the controversy is, therefore, without jurisdiction.

The respondents are at liberty to move an application before the Civil Judge for modification of the order of injunction if he is so advised but till the injection order dated 25.6.2003 is in force, the learned Civil Judge (Sr. D.) has no right to make any observation with regard to the merits of the controversy.

So far as the application for spot inspection is concerned, both the parties have filed applications for spot inspection. The learned Civil Judge on the application filed by the petitioner may consider the possibility of spot inspection as to whether the property in dispute is subject matter of the suit as well as injunction order. Without making spot inspection it will not be possible for the Civil Judge (S.D.) to come to the conclusion in either way.

In A.I.R. 1992 A.P. 300, Chintapatla Arvind Babu and another vs. Smt. K. Balakistamma alias Bhargavi and another, it has been observed that the expression 'local investigation' used in Order 26 Rule 9 C.P.C. is wide enough to include 'localisation with reference to the documents of title'.

It has been held in the case Ram Chadnra and another vs. District Judge, Gorakhpur and others 1999 (4) A.W.C. 3405 that

evidentiary value of Commissioner's report is to be decided at the time of haring of the suit. The relevant observations are as under:

"In the present case, the Commissioner was appointed, who had inspected the spot in presence of both the parties who had signed on the field book. He had submitted his report. Acceptance of the report is only an acceptance of the report on the record. Evaluation of the report for the purpose of evidence is to be ascertained at the time of hearing on the basis of the material that might come before the court. the evaluation of the report is to be made on the basis of examination of the commissioner and all these points which are now being taken can very well be put forth while the commissioner is examined. The acceptance of the report does not ipso facto make the report admissible into evidence. It does not determine the evidentiary value of the report."

Considering the facts and circumstance of the case the petitioners are directed to move afresh application for spot inspection.

In the light of facts and circumstances mentioned above all these applications are directed to be decided by a common order.

Consequently the present writ petition is disposed of with the direction that the learned Court below shall dispose of other applications pending as stated above along with the application under Order 39 Rule 2 C.P.C. by a reasoned order after hearing the parties within one month after filing certified copy of this order.

(Rajesh Tandon, J.)

1.10.2003

Dhyani